IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2520 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

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KORI BUDHAIRAM RAMSNEHI

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 2520 of 2002

MR PK SHUKLA for Petitioner No. 1

MR GORI, AGP, for Respondent No. 1

NOTICE SERVED BY DS for Respondent No. 2

..... for Respondent No. 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 02/09/2002

ORAL JUDGEMENT

Rule. Mr Gori learned AGP waives service of Rule.

2. In this petition under Article 226 of the Constitution, the petitioner has challenged the decision dated 5-3-2001 (Annexure C) of respondent No.1 State Government in the Roads & Buildings Department, rejecting the petitioner's application for compassionate appointment upon death of his father.

3. The petitioner's application has been rejected on the ground that the petitioner was not residing with the deceased at the time of the death of the concerned Government employee. Mr Gori learned AGP has also referred to various documents on record in support of the said aspect.

4. Mr Shukla for the petitioner relies on the decision of this Court in Satishkumar R Patel vs. DDO, Baroda 2001 (1) GLR 270 taking the view that the application for compassionate appointment cannot be rejected only on the ground that the applicant's son was not residing with the deceased at the time of death of the concerned Government employee and that the son can always revert back to the family and support his mother.

In the facts of the instant case also, the deceased employee is survived by the widow (mother of the petitioner) and the petitioner-son. In this view of the matter, the controversy as to whether the petitioner was residing with the deceased or not at the time of death of the concerned employee pales into insignificance.

5. The impugned decision dated 5-3-2001 at Annexure C' is, therefore, quashed and set aside. The matter shall be reconsidered by the authorities in light of the relevant Government instructions in this behalf without being influenced by the fact that the petitioner was not residing with the deceased at the time of death of the concerned employee.

It is, however, clarified that the Court has gone into any other aspect of the matter and, therefore, the respondents shall take fresh decision in accordance with law. In view of the fact that the respondents have already taken considerable time to decide the petitioner's application for compassionate appointment, the respondent shall consider the matter at the earliest and in any case within two months from the date of receipt of writ of this Court.

6. The petition is accordingly disposed of in terms of the aforesaid directions. Rule is made absolute to

the aforesaid extent only.

Direct service is permitted.

(M.S. Shah,J)

zgs/-